TOON BOON LEE v. YEO AH BENG

[O.C.J. (Rajah J.) October 3, 1985]

[Singapore – Suit No. 3443 of 1980]

Family Law – Husband and wife – Wife went abroad – Purchase of flat in joint-names by husband – Divorce obtained by wife – Property never used as a matrimonial home – Whether resulting trust in favour of husband in respect of joint share.

Trust – Resulting trust – Husband and wife – Purchase of flat in joint-names by husband – Divorce obtained by wife – Property never used as matrimonial home – Whether resulting trust in favour of husband in respect of joint share.

The plaintiff and the defendant married in 1971. They stayed in a rented flat but in August 1974, moved into the house of the plaintiff's father. They were looking for a place of their own. However, in July 1975, the defendant left for England leaving behind her husband and child. Nonetheless the plaintiff applied for and was allocated a flat (hereafter known as "the flat") which was financed by a housing loan the plaintiff took out in the joint names of himself and his wife. All the payment for the purchase of the flat were paid by the plaintiff. The lease was issued also in the joint names of the parties.

The defendant had only been back in Singapore twice on holiday and had refused to return to her family in Singapore. Finally, in October 1979, the defendant started divorce proceedings against the plaintiff in London and obtained her Decree Absolute in August 1981. The plaintiff remarried in September 1983. He claimed the following: (1) a declaration that the defendant had no beneficial interest in the flat and (2) an order that the defendant forthwith transfer the half undivided share or interest in the flat to the plaintiff.

The defendant counterclaimed a declaration that she was beneficially entitled to one undivided equal half share in the flat and for an order that it be sold and the net proceeds of sale be divided equally between the defendant and the plaintiff or otherwise as may be just.

It was not disputed that all payments for the purchase of the flat and its maintenance had been borne by the plaintiff.

Held: (1) the proceedings herein are not matrimonial proceedings under the Women's Charter wherein the Courts are given special summary powers of dealing with matrimonial assets and that these special powers are not relevant when considering questions relating to resulting trusts;

(2) although the defendant had obtained a divorce against her husband in matrimonial proceedings brought in England she had not obtained any order as to division or disposal of matrimonial assets;

(3) the property here was never used as the matrimonial home of the parties since the time of its purchase in 1975;

(4) there will therefore be judgment for the plaintiff with costs. The defendant's counterclaim is dismissed.

Case referred to:

(1) *Neo Tai Kim* v. *Foo Stie Wah* [1982] 1 M.L.J. 170; [1985] 1 M.L.J. 397.

CIVIL SUIT.

Cheng Tim Pin for the plaintiff.

Y.M. Jumabhoy (*Leong Yew Kee* with him) for the defendant.

Cur. Adv. Vult.

Rajah J.: The plaintiff in this action claims against the defendant for:–

(1) a declaration that the defendant has no beneficial interest in the property known as Block 1, 77-A Neptune Court, Marine Vista, Singapore 1544 (77-A Neptune Court) and

(2) an order that the defendant forthwith transfer the half undivided share or interest in 77-A Neptune Court to the plaintiff.

Both the plaintiff and defendant met each other for the first time in 1966 in Sydney, Australia where the plaintiff was studying to be an aircraft servicing engineer and the defendant was doing a secretarial course. There they fell in love with each other and were anxious to get married in Singapore as soon as possible after both of them had completed their courses.

The defendant having completed her course returned to Singapore in late 1967. It was their intention that after marriage they were to live on their own and to acquire a home of their own as soon as possible. With this end in view she was to look for a suitable house or flat and to get herself a job as soon as possible. In late 1968 the defendant secured a secretarial job at a salary of $600 per month. The plaintiff, after completing his studies and training in Sydney, returned to Singapore in December 1970 and resumed employment immediately in the Department of Civil Aviation as an Airworthiness Surveyor at a salary of $1,200 a month. They were married on January 2, 1971 and lived in a rented flat at Clemenceau Avenue ($180 a month). Prior to his marriage the plaintiff had purchased a car on hire-purchase on which he had to make periodic instalment payments.

In the meantime they were on the look-out for a suitable place for their home.

In 1972 they came across a house in Lorong Abu Talib, which was to their liking and which the plaintiff wished to purchase. He applied to Government for a loan for such purchase and the Government "on December 7, 1972 approved a loan of $54,600 to assist him to purchase a 2-storey intermediate terrace house at P/Lot 2640 Mk 27 Lorong Abu Talib." (AB9). The purchase, however, did not materialise as the deal fell through because of the unwillingness of the developer.

In 1973 the Singapore Government approved a housing scheme for public officers at the Frankel Avenue/Siglap Road site. On November 28, 1973 the plaintiff applied to the Permanent Secretary (Finance) through the Director of Civil Aviation for a loan of $45,000 as follows:

"With reference to FCM No 46/73 dated 23.11.73 I wish to submit my application for an Executive Flat ..."

and sent his cheque for $500 as booking fee for a flat (AB2-4). It would appear that the plaintiff was not successful in obtaining an allocation of a flat on the Frankel Avenue/Siglap Road site.

They moved out of their Clemenceau Avenue flat sometime in August 1974 and stayed sometimes with the defendant's brother at 255 Upper East Coast Road but mostly in the plaintiff's father's house at 70 Jalan Songket, Charlton Park which had been bought by the father in 1967-68. The defendant says that the reason for giving up the Clemenceau Avenue flat was to save the $180 a month rent so that the money thus saved could be utilised to buy the matrimonial home.

A daughter (Valerie) was born to the couple on December 8, 1974 and she was looked after by the plaintiff's mother as the defendant resumed her secretarial work soon after.

The defendant left for England leaving her child behind with her mother-in-law in July 1975 when they were staying in his father's house. Whilst the defendant was in England the plaintiff, who had sometime in August/September 1975 applied for an Executive Flat under the Staff Housing Scheme at Neptune Court, Marine Vista, was on September 22, 1975 allocated 77-A Neptune Court at the price of $49,650 (AB8) with a full loan under Government Housing Scheme (AB10).

The application for staff Housing Loan dated September 24, 1975 through Credit POSB Pte. Ltd. was made in their joint names (AB16) for the reason he says that he wanted her to return to Singapore and stay with him. He says that he did not tell her of the joint tenancy; he never intended his wife to get any share in 77-A Neptune Court.

The plaintiff moved into 77-A Neptune Court on October 18, 1975 while the defendant was still away in England. She returned to Singapore for a holiday in February/March 1976 (see her second divorce petition where she swears that she had been continuously staying in England for a period of at least 5 years from July 19, 1975 before presentation of her second petition DAB164-170).

The defendant left for London for the second time again without her child in July 1976. The plaintiff went to London in September/October 1977 and tried to persuade her to return but without success as she preferred to stay on in London where she was working as a secretary. He returned to Singapore in October 1977. The lease was issued by the Government in the joint names of the parties on January 12, 1978.

After a two year stay in London she returned to Singapore for a holiday (see second divorce petition DAB164-170) in September/October 1978. She went back to London for the third time in October/November 1978. In London the defendant started divorce proceedings in the English Courts against the plaintiff in October 1979 (No. 11319 of 1979) on the grounds of five years' separation (PAB 49-52) and obtained a *Decree Nisi* on January 2, 1980. On the application of the plaintiff the Court found her "to be a thoroughly unreliable person" (AB47) and set aside the Decree *Nisi* on February 27, 1980 on the ground "that the wife presented a false case to the court in the divorce suit for the purpose of obtaining a decree." She, however, persisted with her divorce proceedings and finally obtained her Decree Absolute (DAB171) on August 28, 1981 in her second petition dated December 1, 1980 (DAB164-170) on the ground that "the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition namely from about July 19, 1975 when the petitioner left Singapore and came to England for the first time." (Para 10 DAB166).

The plaintiff remarried on September 26,

1983 and is now residing at 77-A Neptune Court with his wife and his child by the first marriage.

It is in these circumstances that the plaintiff has commenced these proceedings and claims the declaration and order abovementioned.

To the plaintiff's Statement of Claim the defendant has filed an Amended Defence and Counterclaim whereby she denies that the plaintiff is entitled to the relief claimed or any relief and wherein she says:

"Para 3 – Sometime in 1973 the defendant and the plaintiff agreed that they would purchase the property known as Block 1, 77A, Neptune Court, Marine Vista, Singapore as their permanent matrimonial home.

Para 4 – It was the intention of both of the defendant and the plaintiff that the said property was to be purchased in the joint names of the defendant and the plaintiff and each having an equal share of the said property. The defendant and the plaintiff also agreed that the purchase price of the said property would be raised by a mortgage and the plaintiff to pay the monthly repayments of the mortgage and the defendant to be jointly and severally liable with the plaintiff to repay the mortgage loan.

Para 5 – Pursuant to the said agreement and intention of the defendant and plaintiff mentioned in paragraphs 3 and 4 of the Defence herein, the said property was purchased by the defendant and plaintiff and registered in their joint names.

Para 6 – The purchase price of the said property amounting to $49,650.00 was raised by the said mortgage mentioned in paragraph 3 of the Statement of Claim. The defendant is a party to the said mortgage as a surety and is liable jointly and severally with the plaintiff to pay the monthly repayments of the mortgage loan.

Para 7 – It is true that the plaintiff has been paying the monthly repayments of the said mortgage pursuant to the said agreement and intention of the defendant and plaintiff mentioned in paragraph 4 of the Defence herein.

Para 8 – Further, the defendant from about 1971 to 1973 did occasionally make cash contributions to the plaintiff to help out in the expenses of the household in order that the plaintiff could save for the purchase of their permanent matrimonial house.

Para 9 – Further or in the alternative, the plaintiff has advanced one undivided equal half share of the said property to the defendant absolutely for her benefit or that the plaintiff is presumed to have advanced one undivided equal half share of the said property to the defendant absolutely for her benefit."

She then went on to claim against the plaintiff:–

"A declaration that she is beneficially entitled to one undivided equal half share in the said property and for an order that the said property be sold and the net proceeds of sale be divided equally between the defendant and the plaintiff or otherwise as may be just."

In the first instance it should be noted that the proceedings herein are not matrimonial proceedings under the Women's Charter wherein the courts are given special summary powers of dealing with matrimonial assets and that these special powers are not relevant when considering questions relating to resulting trusts. Although the defendant has obtained a divorce against her husband in matrimonial proceedings brought in England she has not obtained any order as to division of or disposal of matrimonial assets. In the circumstances I therefore propose to deal with this action on the basis of paragraph 9 of the Amended Defence and Counterclaim and of the case of *Neo Tai Kim* v. *Foo Stie Wah*,[1] that is to say whether in all the circumstances of this case there is a resulting trust in favour of the husband plaintiff in respect of the joint share now in the name of the defendant.

It is not in dispute here that all the payments for the purchase of the property have been made by the husband and no one else and that these periodical payments in respect of the full loan under the Staff Housing Scheme at Neptune Court were and are being deducted at source from the plaintiff's salary. This being so the formal Mortgage Deed in which the plantiff and defendant appear as mortgagors was an additional security under the Housing Scheme for Government officers.

The first premise on which the defendant builds her case is that she and the plaintiff agreed to purchase 77A Neptune Court in 1973 (para 3). This cannot be so for the Staff Housing Scheme for Government officers at Neptune Court came into being only in August/September 1975. Now it will be remembered that the defendant had left Singapore in July 1975 for London without her husband and child. This she did in my view with the intention of making the United Kingdom her permanent home. In paragraph 3 of her 2nd Divorce Petition dated December 1980 (DB164-170) she swears that she "is domiciled in England and Wales" and in paragraph 10 thereof she says "the parties to the marriage have lived apart for a continuous period of at least 5 years immediately preceeding the presentation of the petition namely from about July 19, 1975 when she left Singapore and came to England for the first time." In view of this I find it difficult to believe that she, as from after July 19, 1975, was interested in establishing

for herself a permanent matrimonial home in Singapore. In any event the truth of the matter here is that the defendant was away in England when the plaintiff purchased the house and it is not disputed that they never lived there together as husband and wife nor did she contribute any part of her earnings to its upkeep or maintenance.

The plaintiff in his examination-in-chief says:

"I did not intend to give my wife a half share in the house. I put her name in because she happened to be my wife. At that particular time she was already in England. She left for the first time in July 1975. Between 1975 and 1978 she gave me the impression that she would return and stay with me in Singapore. The purchase of the flat was wholly financed by the Government through the POSB. They gave me the full purchase price. Repayments were from my salary. Defendant made no contribution towards the purchase of the property."

Again under cross-examination he says:

"I never intended my wife to get any share in this property. The reason why I included her name was to induce her to come back. I had not thought of any other way. This is not an after thought.

Put: If you had sought professional advice you could have excluded your wife – I agree."

I accept the evidence of the plaintiff for in the circumstances of this case his evidence rings true as indeed that of the defendant rings false on the salient points.

Counsel for the defendant cited a number of cases in support of her claim. They are in my view cases related to matters pertinent to matrimonial homes as matrimonial assets. This is not the position in the instant case for the property here was never used as the matrimonial home of the parties since the time of its purchase in 1975.

There will therefore be judgment for the plaintiff with costs and a declaration and order as prayed for by him. Counterclaim of the defendant is dismissed with costs.

Claim allowed.

Solicitors: *Yap & Yap; Y.M. Jumabhoy & Co.*

PUBLIC PROSECUTOR v. PHUA KENG TONG

PUBLIC PROSECUTOR v. FREDERICK TAN IM KIAN

FEDERICK TAN IM KIAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Thean J.) February 5, 1986]

[Singapore – Magistrate's Appeal Nos. 178, 179 & 181 of 1984]

Official Secrets – Unauthorized communications and receipt of classified documents – Whether s. 5(1) of Official Secrets Act ultra vires art. 14(1) of Constitution – Whether mens rea a necessary ingredient of offence – Whether offences proved – Adequacy of sentence – Official Secrets Act (Cap. 233), ss. 5(1) (e) (f), 5(2), 12 & 17(2) – Singapore Constitution, art. 14.

Constitutional Law – Meaning of "security" – Whether Official Secrets Act (Cap. 233), s. 5(1) contravenes Singapore Constitution, art. 14.

These three appeals arose out of a joint trial of three charges, in respect of Frederick Tan Im Kian ("Tan"), under section 5(1) (e) (f) of the Official Secrets Act for communication certain confidential documents to Phua Keng Tong ("Phua"), and, in respect of Phua, under section 5(2) of the Act for receipt of certain confidential document. Tan at all material times was the Director of Protocol and Consular Division, Ministry of Foreign Affairs. Phua, a close friend of Tan, was the financial manager of Philips (Singapore) Pte. Ltd. The learned Senior District Judge convicted Tan on all the three charges and sentenced him to one day's imprisonment and to pay a fine of $750 on each charge, the sentence of imprisonment to run concurrently. Phua was acquitted and discharged. The Public Prosecutor appealed against the acquittal of Phua and against the sentences on Tan, who in turn appealed against convictions and sentences.

Held: (1) section 5(1) of the Act falls within the ambit of Article 14(2)(a) of the Constitution of Singapore and is therefore not *ultra vires* Article 14(1) of the Constitution;

(2) *mens rea* is a necessary ingredient of the offence which the prosecution must prove. The prosecution has proved the ingredients of the offences with which Tan was charged, and his convictions must stand. Considering all the relevant facts, the learned Judge is not disposed to disturb the nominal terms of one day's imprisonment. The fine of $750, however, is manifestly inadequate and is increased to $1,500 for each of the charges and, in default, one month's imprisonment;

(3) the ingredients of the charge have been proved against Phua. The acquittal is set aside, and Phua is convicted of the charge. He is fined $1,500, and, in default, one month's imprisonment.

Cases referred to:

(1) *Rex* v. *Crisp and Homewood* (1919) 83 J.P. 121.
(2) *R.* v. *Fell* (1963) Crim. L.R. 207.
(3) *Sherras* v. *De Rutzen* [1895] 1 Q.B. 918, 921.
(4) *Lim Chin Aik* v. *The Queen* [1963] A.C. 160; [1963] M.L.J. 50.
(5) *Sweet* v. *Parsley* [1970] A.C. 132.